Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALBERT LUTZ and MANFRED GERDES

Appeal No. 2002-1574
Application No. 09/280,921

ON BRIEF

Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 17-21 and 23-25. Claims 3-16 and 22 have been allowed.

We AFFIRM.

BACKGROUND

The appellants' invention relates to a device and method for controlling at least one operating-dynamics variable of a vehicle in a closed loop. An understanding of the invention can be derived from a reading of exemplary claims 1 and 20, which have been reproduced in the appendix to the Brief.

The single prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Jonner et al. (Jonner) 5,826,950 Oct. 27, 1998

Claims 1, 2, 17-21 and 23-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Jonner.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the Answer (Paper No. 20) for the examiner's complete reasoning in support of the rejection, and to the Brief (Paper No. 19) and Reply Brief (Paper No. 21) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

All of the claims stand rejected as being anticipated by Jonner. Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). Anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or recognition of inherent properties that may be possessed by the reference. See Verdegaal Brothers Inc. v. Union Oil Co., 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). Nor does it require that the reference teach what the applicant is claiming, but only that the claim on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Jonner is directed to a device and method for controlling the brake system of a vehicle. Using the language of claim 1 as a guide, the Jonner system illustrated in Figure 1 comprises a braking system including at least one brake circuit HZ1 or HZ2 and a reservoir 102 for accommodating a braking medium, the at least one brake circuit HZ2 including wheel brake cylinders 108 and 110, a first valve arrangement 120, 122 on an output side and a second valve arrangement 118 on an input side. The first valve arrangements 120, 122 are connected to the wheel brake cylinders which are

assigned to the brake circuit HZ2, and the second valve arrangement 118 is connected to the reservoir 102, and a system determining a particular cylinder of the wheel brake cylinders which exhibits a highest brake pressure. The system adjusts a particular brake pressure of the particular cylinder in response to a driver-independent brake actuation, the particular brake pressure being adjusted by driving the second valve arrangement 118, and drives the first valve arrangements 120, 122 which are assigned to a respective cylinder of the wheel brake cylinders, the first valve arrangements being driven to adjust a further brake pressure of at least one remaining cylinder of the wheel brake cylinders. See column 3, line 52 to column 6, line 58.

Appellants' first two arguments in opposition to this rejection (Brief, pages 4-5) are merely blanket statements repeating the language of the claims and arguing that such "is not taught by the applied Jonner reference." These arguments are not persuasive in that they do not explain what limitations of the claim fail to "read on" the Jonner reference.

Appellants next assert that Jonner "is directed to [a] method and apparatus for controlling the brake system of a vehicle where it is determined when drive slip occurs at at least one of the driven wheels and then initiating a slip control cycle in response to the presence of the drive slip," arguing that in the Jonner system the "slip control cycle is not initiated if 'the wheel slip does not exceed the predetermined limit value' or 'if the slip of the wheel in question is within an acceptable range'" (Brief, page 5.) As to this

point, we agree with the Examiner that "[r]egardless of whether or not the wheel slip control is always actuated . . . *when wheel slip control in Jonner does occur* . . . the limitations of the claim are met" (Answer, page 7; emphasis added), as can be discerned from the explanation beginning at line 53 of column 4. The broad language of the claim merely requires that "the system adjusts a particular brake pressure of the particular cylinder [exhibiting a highest brake pressure] in response to a driver-independent brake actuation, the particular brake pressure being adjusted by driving the second valve arrangement." The Examiner correctly points out that when wheel slip does exceed a predetermined limit value or falls outside an acceptable range, the slip control cycle (i.e., the driver-independent brake actuation) is initiated and the particular brake pressure of the particular cylinder exhibiting the highest brake pressure is adjusted by driving the second valve arrangement 118 (Answer, page 7).

Appellants further take note of Jonner's explanation in the Abstract that "the pressure level in the wheel brake with the highest pressure level is modulated by driving a switching valve USV [118] which affects the pressure in all the wheel brakes of the brake circuit" (Reply Brief, page 2), arguing that the rejection fails because the Jonner system differs on this point from what is claimed in the instant application. We do not agree. The fact that the system disclosed in Jonner, when effecting a "modulation" of the pressure in the wheel brake with the highest pressure level, affects the pressure in all the wheel brakes, does not cause the rejection to be defective for, despite the fact

that this reaction also has an effect on all of the other wheel brakes, the system in Jonner nevertheless "adjusts a particular brake pressure of the particular cylinder [exhibiting the highest brake pressure]" (emphasis added) by driving the second valve arrangement 118, which is all that the claim requires. The claim does not call for the system to adjust only the particular brake pressure of the particular cylinder exhibiting the highest brake pressure.

Further in this regard, claim 1 recites "a system determining a particular cylinder of the wheel brake cylinders which exhibits a highest brake pressure" and, as pointed out by the Examiner, Jonner explicitly discloses that "pressure at the wheel brake or brakes with the higher pressure level is driven by the switching valve" (see Jonner column 6, lines 55-56). Thus, it would have been apparent to one of ordinary skill in the art that in order to drive the pressure to the wheel brake or brakes exhibiting a "highest brake pressure," the "system" disclosed in Jonner must, in some manner, determine which particular cylinder of the wheel brake cylinders exhibits this pressure, even though details of how this is accomplished may not be explicitly set forth. Thus, this limitation of claim 1 is, in our view, implicitly present in Jonner.

Appellants also argue that "there is no disclosure in Jonner to have a system wherein the system drives the first valve arrangement which is assigned to a respective cylinder of the wheel brake cylinders, the first valve arrangement being driven to adjust a further brake pressure of at least one remaining cylinder of the wheel brake cylinders"

(Brief, page 6; Reply Brief, pages 2 and 3). Again, we agree with the Examiner that this language recited in claim 1 reads on Jonner, inasmuch as Jonner discloses inlet and outlet valves 124 and 132 in a "first valve arrangement" to adjust the lower pressures of the remaining cylinder(s) (Answer, page 6; see Jonner Figure 1 and column 6, lines 5-6). Specifically, the inlet and outlet valves of the first valve arrangement of Jonner serve to modulate the pressure in the wheel with the lower pressure level (or in the words of the claim, "a further brake pressure").

It therefore is our opinion that all of the subject matter recited in claim 1 "reads on" the system disclosed by Jonner, and thus the reference anticipates the claim. This being the case, we will sustain the rejection of claim 1, as well as the like rejection of dependent claims 2 and 17-19, which the appellant has chosen to group with claim 1 (Brief, page 4).

Claim 20 recites the invention in three method steps which track the invention as presented in apparatus claim 1. On the basis of the same reasoning set forth above with regard to claim 1, we also will sustain the Section 102 rejection of claims 20, 21 and 23-25. The appellants' arguments regarding claim 20 (Brief, pages 6-7) are the same as those directed to claim 1, and we find them not to be persuasive for the reasons set forth above.

CONCLUSION

The rejection of claims 1, 2, 17-21, and 23-25 as being anticipated by Jonner is sustained.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)
NEAL E. ABRAMS Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
CHARLES E. FRANKFORT Administrative Patent Judge	)

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